

<b>TO:</b> <div style="text-align: center;"> <b>Mail Stop 8</b>  <b>Director of the U.S. Patent and Trademark Office</b>  <b>P.O. Box 1450</b>  <b>Alexandria, VA 22313-1450</b> </div>	<b>REPORT ON THE</b> <b>FILING OR DETERMINATION OF AN</b> <b>ACTION REGARDING A PATENT OR</b> <b>TRADEMARK</b>
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been  
filed in the U.S. District Court District of Arizona on the following ☐ Patents or ☒ Trademarks:

DOCKET NO. CV 08-1740-PHX-DGC	DATE FILED 09/24/08	U.S. DISTRICT COURT District of Arizona
PLAINTIFF Best Western International, Inc.		DEFENDANT Niagara River Hotels, Inc. et al
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 SEE ATTACHED		
2 19 Trade <sup>7-5-6</sup>		
3		
4		
5		

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading		
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK	
1			
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3			
4			
5			

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT	
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CLERK RICHARD H. WEARE	(BY) DEPUTY CLERK C. Harney	DATE 09/24/08
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STD

**U.S. District Court  
DISTRICT OF ARIZONA (Phoenix Division)  
CIVIL DOCKET FOR CASE #: 2:08-cv-01740-DGC**

Best Western International, Inc. v. Niagara  
River Hotels, Inc. et al  
Assigned to: Judge David G Campbell  
Demand: \$162,000  
Cause: 15:1051 Trademark Infringement

Date Filed: 09/23/2008  
Jury Demand: Plaintiff  
Nature of Suit: 840  
Trademark  
Jurisdiction: Federal Question

**Plaintiff**

**Best Western International, Inc.**, represented by **Kelly Y Schwab**

*an Arizona non-profit  
corporation*

Curtis Goodwin Sullivan  
Udall & Schwab PLC  
501 E Thomas Rd  
Phoenix, AZ 85012  
602-393-1700  
Fax: 602-393-1703  
Email:  
kschwab@cgsuslaw.com  
**ATTORNEY TO BE  
NOTICED**

**Michelle Lynn Swann**  
Curtis Goodwin Sullivan  
Udall & Schwab PLC  
501 E Thomas Rd  
Phoenix, AZ 85006  
602-758-9184  
Email:  
mswann@cgsuslaw.com  
**ATTORNEY TO BE  
NOTICED**

V.

**Defendant****Niagara River Hotels, Inc.***a Canadian corporation***Defendant****Mangat Verma***an individual*

<b>Date Filed</b>	<b>#</b>	<b>Docket Text</b>
09/24/2008	<u>1</u>	COMPLAINT. Filing fee received: \$ 350.00, receipt number 09700000000002246127, filed by Best Western International, Inc.. (Attachments: # <u>1</u> Exhibit List, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit, # <u>5</u> Exhibit, # <u>6</u> Exhibit) (Swann, Michelle) (Entered: 09/24/2008)
09/24/2008	<u>2</u>	Corporate Disclosure Statement by Best Western International, Inc.. (Swann, Michelle) (Entered: 09/24/2008)
09/24/2008	<u>3</u>	Additional Attachments to Main Document <i>Summons - Verma</i> by Plaintiff Best Western International, Inc.. (Swann, Michelle) (Entered: 09/24/2008)
09/24/2008	<u>4</u>	Additional Attachments to Main Document <i>Summons - Niagara</i> by Plaintiff Best Western International, Inc.. (Swann, Michelle) (Entered: 09/24/2008)
09/24/2008	<u>5</u>	Additional Attachments to Main Document <i>Civil Cover Sheet</i> by Plaintiff Best Western International, Inc.. (Swann, Michelle) (Entered: 09/24/2008)
09/24/2008		This case has been assigned to the Honorable David G. Campbell. All future pleadings or documents should bear the correct case number: CIV 08-1740-PHX-DGC. This is a TEXT ENTRY ONLY. There is no PDF document

		associated with this entry. (CMH, ) (Entered: 09/24/2008)
09/24/2008	6	Notice of Magistrate Judge Availability Form. (CMH, ) (Entered: 09/24/2008)
09/24/2008	7	Summons Issued as to Niagara River Hotels, Inc.. (CMH, ). *** IMPORTANT: You must select "Document and stamps" or "Document and comments" on the print screen in order for the court seal to appear on the summons you print. (Entered: 09/24/2008)

PACER Service Center			
Transaction Receipt			
09/24/2008 16:30:23			
<b>PACER Login:</b>	us4935	<b>Client Code:</b>	
<b>Description:</b>	Docket Report	<b>Search Criteria:</b>	2:08-cv-01740-DGC
<b>Billable Pages:</b>	1	<b>Cost:</b>	0.08

1 The Law Offices of  
2 CURTIS, GOODWIN, SULLIVAN,  
3 UDALL & SCHWAB, P.L.C.  
4 501 East Thomas Road  
Phoenix, Arizona 85012-3205  
Telephone (602) 393-1700

5 Kelly Y. Schwab, #014038  
6 Michelle Swann, #019819  
7 mswann@cgsuslaw.com  
kschwab@cgsuslaw.com  
8 Attorneys for Best Western International, Inc.

9  
10 IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

11 Best Western International, Inc., an  
Arizona non-profit corporation,

12 Plaintiff,

13 v.  
14

15 Niagara River Hotels, Inc., a Canadian  
corporation, and Mangat Verma, an  
16 individual,

17 Defendants.

NO. CV08-1740

Complaint for Federal Trademark  
Infringement, False Designation of Origin,  
Federal Trademark Dilution, Breach of  
Contract, Open Account, Post Termination  
Use of Trademarks, Unfair Competition, State  
Trademark Dilution, and Common Law  
Trademark Infringement

18  
19 Plaintiff, Best Western International, Inc. ("Best Western"), for its Complaint  
20 against Defendants Niagara River Hotels, Inc., a Canadian corporation, and Mangat Verma,  
21 an individual, alleges as follows:

22 **NATURE OF THE ACTION**

23 1. This is an action for breach of contract, federal trademark infringement,  
24 and unfair competition under the Trademark Act of 1946, as amended (the Lanham Act, 15  
25 U.S.C. §§ 1051 *et seq.*), and related common law and statutory causes of action arising from

1 Defendants' refusal to cease and desist their unauthorized use of Best Western's trade name,  
2 trademarks, service marks, logos, and other similar identifying symbols (the "Best Western  
3 Marks") in violation of Best Western's federal and common law trademark rights.

4  
5 2. Defendants have also failed to pay amounts owing to Best Western, in  
6 violation of common law and in breach of contract.

7 **THE PARTIES, JURISDICTION, AND VENUE**

8 3. Plaintiff Best Western is a non-profit corporation organized under the  
9 laws of the State of Arizona with its headquarters located in Phoenix, Arizona.

10 4. Upon information and belief, Defendant Niagara River Hotels, Inc.  
11 ("Niagara"), is a Canadian corporation with its principal place of business in Ontario, Canada.  
12

13 5. Defendant Mangat Verma ("Verma") is an individual and is believed to  
14 be a resident of Ontario, Canada.

15 6. This Court has jurisdiction over the Lanham Act claim set forth below by  
16 virtue of 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338(a), and over the other claims set  
17 forth below by virtue of 28 U.S.C. §§ 1332, 1367 and/or 1338(b). Further, there are no  
18 matters pending between the parties in any other jurisdiction regarding Defendants' Lanham  
19 Act violations; Best Western is an Arizona non-profit corporation with its principal place of  
20 business in Phoenix, and its witnesses are either located in Phoenix or available in Phoenix;  
21 and Defendants executed a contract that contained a forum selection clause requiring all  
22 disputes arising from that contract be resolved by an Arizona state or federal court.  
23 Defendants' trademark violation impacts the goodwill and reputation of Best Western and all  
24 of its members, resulting in a significant, direct harm and effect on Best Western, an  
25

1 American corporation engaged in commerce in the United States, Canada, and worldwide.  
2 Defendants contractually agreed to liquidated damages in the event that they continued to use  
3 Best Western Marks after the termination of their membership. Defendants continued to use  
4 the marks of Best Western, an American business name representing quality and reputation  
5 that is sold for use by others and, therefore, wrongfully capitalized on the goodwill and  
6 reputation of Best Western. If the Best Western name is diluted and the reputation tainted, all  
7 Best Western members and customers are adversely impacted.

9           7. Venue in this judicial district and the exercise of personal jurisdiction  
10 over Defendants by this Court are proper pursuant to 28 U.S.C. § 139 1(b) and (c) and  
11 because, among other reasons, the Defendants expressly contractually agreed to litigate all  
12 disputes with Best Western arising from or related to the Best Western's Membership  
13 Application and Agreement executed by defendant Niagara and defendant Verma on or about  
14 July 17, 2006, or any relationship between the parties, in the Arizona state or federal court  
15 located in Maricopa County, Arizona. Further, Defendants have caused events to occur, and  
16 injuries to result, in the State of Arizona, and Defendants aimed their conduct at Best  
17 Western, knowing that Best Western is located in Arizona, and harming Best Western in  
18 Arizona. A copy of the Membership Agreement is attached as Exhibit 1.

### 21 GENERAL ALLEGATIONS

22           8. Best Western operates as a membership organization consisting of  
23 individually owned and operated hotels (i.e., its members). The rights and obligations of Best  
24 Western's members are determined by the membership and are set forth in the Membership  
25 Agreement and in Best Western's Bylaws. Additionally, Best Western's members establish

1 Best Western's Rules and Regulations (the "Rules and Regulations").

2 9. Best Western provides its members with a worldwide reservation system  
3 and worldwide marketing campaigns, as well as an option to participate in collective  
4 purchasing of hotel equipment, furnishings, and supplies (the "Best Western Services"). Best  
5 Western employs a large number of employees worldwide who are dedicated to providing  
6 member hotels with the Best Western Services.  
7

8 10. Each Best Western member is authorized to use the Best Western  
9 trademarks and other intellectual property (the "Best Western Marks") in connection with its  
10 hotel pursuant to a limited, non-exclusive license (the "Best Western License"), which is set  
11 forth in the Membership Agreement. See Membership Agreement at ¶¶ 1, 19-26.  
12

13 11. In exchange for receiving the Best Western Services and the Best  
14 Western License, Best Western members are obligated to, among other things, pay  
15 membership fees and other assessments.  
16

17 12. Best Western first adopted "Best Western" as its trade name in 1947.  
18 Shortly thereafter, Best Western adopted and began using "Best Western" as a trademark  
19 identifying hotel services provided by member hotels that were affiliated with Best Western.  
20 Best Western has continuously and extensively promoted its trade name and trademark in  
21 interstate commerce since 1947. As a result of this extensive promotion, the trade name and  
22 trademark have become famous among consumers as a source-identifying symbol.  
23

24 13. Since 1947, Best Western has registered with the United States Patent  
25 and Trademark Office ("USPTO") various trademarks, service marks, and collective  
membership marks. On April 14, 1959, the Best Western logo was first registered as a



1 service mark by the USPTO under Registration No. 677,103. Best Western has developed the  
2 Best Western Marks at great expense over the past decades.

3 14. Best Western owns the following registrations for Best Western Marks  
4 and the marks referenced in these registrations:  
5

6 (a) a Best Western logo was registered as a service mark by the USPTO on April  
7 14, 1959, under Registration No. 677,103;

8 (b) a Best Western logo was registered as a collective membership mark by the  
9 USPTO on October 27, 1959, under Registration No. 687,405;

10 (c) a Best Western logo was registered as a collective membership mark by the  
11 USPTO on August 5, 1964, under Registration No. 769,314;

12 (d) a Best Western logo was registered as a service mark by the USPTO on August  
13 14, 1968, as Registration No. 849,155;

14 (e) a Best Western logo was registered as a service mark by the USPTO on June 8,  
15 1971, under Registration No. 914,616;

16 (f) a Best Western logo was registered as a service mark by the USPTO on June 8,  
17 1971, under Registration No. 914,617;

18 (g) a Best Western logo was registered as a collective membership mark by the  
19 USPTO on June 8, 1971, under Registration No. 914,812;

20 (h) a Best Western logo was registered as a service mark by the USPTO on June 8,  
21 1971, under Registration No. 914,813;

22 (i) a Best Western logo was registered as a service mark by the USPTO on August  
23 30, 1977, under Registration No. 1,072,360;  
24  
25

1 (j) a Best Western logo was registered as a collective membership mark by the  
2 USPTO on September 27, 1977, under Registration No. 1,074,300;

3 (k) a Best Western logo was registered as a service mark by the USPTO on June 11,  
4 1985, under Registration No. 1,341,611;

5 (l) a Best Western word mark was registered by the USPTO as a service mark on  
6 February 3, 1987, under Registration No. 1,427,735;

7 (m) a Best Western word mark was registered by the USPTO as a service mark on  
8 March 10, 1987, under Registration No. 1,432,431;

9 (n) the Best Western crown logo design was registered by the USPTO as a service  
10 mark on December 6, 1988, under Registration No. 1,515,712;

11 (o) Best Western's current logo was registered by the USPTO as a trademark on  
12 June 20, 1995, under Registration No. 1,900,620;

13 (p) Best Western's current logo was registered by the USPTO as a service mark on  
14 November 7, 1995, as Registration No. 1,933,830;

15 (q) Best Western's current logo was registered by the USPTO as a service mark on  
16 November 25, 1997, as Registration No. 2,116,079;

17 (r) Best Western's current logo was registered by the USPTO as a service mark on  
18 October 14, 1997, as Registration No. 2,105,546;

19 (s) Best Western's current logo was registered by the USPTO as a service mark on  
20 March 3, 1998, as Registration No. 2,140,332;

21 (t) Best Western has registered a variety of other designs and phrases as service  
22 marks in connection with the trade of hotel and motel lodging.  
23  
24  
25

1           15. Many of the registrations described above are currently in full force and  
2 effect, unrevoked, and uncanceled. Several of the above listed federal registrations for the  
3 Best Western word mark and logo have become incontestable under 15 U.S.C. § 1065.

4           16. The Best Western Marks are inherently distinctive and possess strong  
5 secondary meaning.  
6

7           17. The Membership Agreement and the Rules and Regulations establish the  
8 minimum standard scores that each member must meet in order to achieve and maintain  
9 membership. As a result, consumers worldwide associate Best Western Marks with high  
10 quality in the hotel/motel industry.  
11

12           18. A key element of Best Western's branding effort is the display of the  
13 Best Western Marks on the premises of member hotels through signs, publications, and other  
14 public displays.

15           19. Upon default by a member of certain of its obligations to Best Western,  
16 including obligations set forth in the Membership Agreement, the Bylaws, and the Rules and  
17 Regulations, the Best Western Board of Directors terminated the membership and the Best  
18 Western License.  
19

20           20. Within 15 days following the termination of membership, the former  
21 member must cease and desist from using, and remove from public view, all Best Western  
22 Marks and all references to Best Western. The former member is also required to cease and  
23 desist from using any item that is similar to the Best Western Marks in spelling, sound,  
24 appearance, or in any other matter.  
25

**DEFENDANTS' BEST WESTERN MEMBERSHIP**

21. On or about July 17, 2006, Defendant Niagara, through its agent Defendant Verma, executed the Membership Agreement. Upon Best Western's approval of the Membership Agreement, Defendant Niagara became a Best Western member and the Membership Agreement became the contract controlling the relationship between Defendants and Best Western.

22. Defendant Verma, as the voting member on behalf of Defendant Niagara, as well as Defendant Niagara's President, consented to the jurisdiction of this court and to venue lying in this District. Defendant Verma became bound by the terms of the Membership Agreement, and personally shares joint liability for Defendant Niagara's obligations arising under the Membership Agreement.

23. Defendants agreed to timely pay all fees, dues, charges, and assessments imposed generally on the membership by the board of Best Western and to promptly pay the costs of all goods or services provided by or ordered through Best Western. Additionally, Defendants further agreed that past due amounts would bear interest at the rate of one and one-half percent (1.5%) per month from the date due until paid, provided that such interest charges would in no way authorize or excuse late payments or limit Best Western's rights and remedies against them.

24. During all relevant times, Defendants owned and operated the hotel formerly known as the Best Western Fireside Hotel, located at 4067 River Road, Niagara Falls, Ontario, Canada, which is referenced in Best Western's records as property T-66051 (the "Hotel").

1           25. Best Western granted Defendants the Best Western License, thereby  
2 allowing them to use the Best Western Marks in connection with the Hotel, subject to the  
3 terms of the Best Western License, and only for the term of the Best Western License.

4           26. Defendants agreed that “[a]ny portion of any sign displaying a Best  
5 Western [Mark] is and shall remain the property of Best Western.” Defendants further agreed  
6 to “transfer title of all such portions of signs, whether now owned or acquired in the future, to  
7 Best Western.” See Membership Agreement at ¶ 21.

8           27. Defendants agreed that termination of the Best Western Membership  
9 would result in termination of the Best Western License. Defendants agreed to “remove from  
10 public view and cease using” all Best Western Marks and all other references to Best Western  
11 within 15 days of the date of termination. See Membership Agreement at ¶ 22.

12           28. Defendants also agreed that, upon termination of the Best Western  
13 License, they would “actively take steps as may be necessary to cause the cessation of all  
14 advertising and distribution of promotional material containing any Best Western Symbol.”  
15 See Membership Agreement at ¶ 22.

16           29. On or about June 17, 2008, in accordance with applicable provisions of  
17 the Membership Agreement, the Bylaws, and the Rules and Regulations, Best Western  
18 notified Defendants that their Best Western membership was terminated and cancelled.  
19 Additionally, Best Western advised the Defendants that they must discontinue use of the Best  
20 Western Marks. A copy of the notice is attached as Exhibit 2.

21           30. On or about July 15, 2008, in the ordinary course of its business, Best  
22 Western sent its representative to the Hotel. As part of the representative's regular duties, she  
23  
24  
25

1 took photographs of signs and collateral items displayed in connection with the operation of  
2 the Hotel. These photographs show that, notwithstanding, Best Western's direction,  
3 Defendants failed to remove items containing the Best Western Marks in connection with the  
4 operation of the Hotel and were still holding the Hotel out to the public as a Best Western  
5 member.  
6

7 31. In a letter dated July 31, 2008, Best Western demanded that Defendants  
8 cease and desist from their continued unauthorized use of the Best Western Marks.  
9 Specifically, Best Western instructed Defendants to immediately: (i) cease and desist using  
10 the Best Western Marks in connection with the Hotel's business, services, or products; (ii)  
11 remove any signs, sign cabinets, banners, letters, or other objects and withdraw and destroy  
12 all advertising, internet based pages, or other promotional materials that bear the Best  
13 Western Marks; and (iii) cease and desist stating or implying that the Hotel is affiliated with  
14 or endorsed by Best Western in any way whatsoever. Best Western warned Defendants that  
15 noncompliance with the terms of the Membership Agreement and trademark laws would  
16 result in litigation. A copy of the July 31, 2008 letter, without enclosures, is attached as  
17 Exhibit 3.  
18  
19

20 32. In the July 31, 2008 letter, Best Western also demanded that Defendants  
21 pay the open account balance due to Best Western. *Id.*

22 **DEFENDANTS' INTENTIONAL AND UNLAWFUL USE OF**  
23 **THE BEST WESTERN MARKS**

24 33. Notwithstanding termination of Defendants' Best Western membership  
25 and Best Western's notice to discontinue use of the Best Western Marks, upon information

1 and belief, Defendants continue to use the Best Western Marks in connection with, and the  
2 operation of, the Hotel.

3 34. Defendants' intentional and unlawful use of the Best Western Marks in  
4 connection with the Hotel is likely to confuse the public and cause members of the public to  
5 stay at the Hotel with the mistaken belief that the Hotel is a Best Western hotel. Defendants'  
6 misconduct is also likely to divert to Defendants the benefit of and/or damage the reputation  
7 and goodwill that Best Western has built through the years.

8  
9 **DEFENDANTS' REFUSAL TO PAY AMOUNTS**  
10 **OWING TO BEST WESTERN**

11 35. Best Western has fully performed all of its obligations under the  
12 Membership Agreement.

13 36. As of September 1, 2008, there remains due and owing, by Defendants to  
14 Best Western, the sum of \$25,869.93, representing certain fees and other charges imposed on  
15 Defendants as Best Western members. See Exhibit 4.

16 37. Defendants have refused and continue to refuse to pay to Best Western  
17 the amounts due and owing.

18  
19 **COUNT I – BREACH OF CONTRACT**

20 38. Best Western incorporates by reference the allegations contained in  
21 paragraphs 1 through 37 above as though fully set forth herein.

22 39. Defendants have refused and continue to refuse to pay to Best Western  
23 the amounts due and owing as required by the Membership Agreement.

24 40. Pursuant to the express terms of the Membership Agreement, interest has  
25

1 accrued and continues to accrue on the unpaid amounts at the rate of one and one-half percent  
2 (1.5%) per month.

3 41. As of September 1, 2008, the total amount owing to Best Western is  
4 \$25,869.93 including interest.

5 42. Pursuant to ¶ 36 of the Membership Agreement, and A.R.S. § 12-341.01,  
6 Best Western is entitled to recover the attorneys' fees and costs incurred in pursuing this  
7 action.  
8

9 **COUNT II – OPEN ACCOUNT**

10 43. Best Western incorporates by reference the allegations contained in  
11 paragraphs 1 through 42 above as though fully set forth herein.

12 44. At Defendants' request, Best Western has rendered services and provided  
13 supplies on an open account, Defendants agreed to pay for such services and supplies on an  
14 open account, and Defendants agreed to pay for such services and supplies when due in  
15 accordance with the Membership Agreement.  
16

17 45. Defendants have failed to pay for the services and supplies that Best  
18 Western has provided. As of September 1, 2008, there is due and owing on an open account  
19 unpaid fees of \$25,869.93, including interest.  
20

21 46. Pursuant to the express terms of the Membership Agreement, interest has  
22 accrued and continues to accrue on this sum at the rate of one and on-half percent (1.5%) per  
23 month until paid in full.  
24

25 47. Pursuant to ¶ 36 of the Membership Agreement, and A.R.S. § 12-341.01,  
Best Western is entitled to recover the attorneys' fees and costs incurred in pursuing this



1 action.

2 **COUNT III – BREACH OF CONTRACT; POST TERMINATION USE OF**  
3 **TRADEMARKS**

4 48. Best Western incorporates by reference the allegations contained in  
5 paragraphs 1 through 47 as thought fully set forth herein.

6 49. Pursuant to the express terms of the Membership Agreement, Defendants  
7 were obligated to remove from public view, and to cease all use of, the Best Western Marks  
8 in connection with the Hotel within fifteen (15) days after termination. This prohibition  
9 included making any representation, whether direct or indirect, indicating that the Hotel is  
10 affiliated with Best Western.  
11

12 50. Despite Best Western's demand that Defendants discontinue their use of  
13 the Best Western Marks in connection with the Hotel, Defendants continued to use the Best  
14 Western Marks in connection with the Hotel.  
15

16 51. Paragraph 24 of the Membership Agreement provides for liquidated  
17 damages where, as here, Defendants continue to use the Best Western Marks in connection  
18 with the Hotel for more than fifteen (15) days following the termination of their Best Western  
19 membership and the Best Western License. The amount of liquidated damages is equal to  
20 fifteen percent (15%) of the mean of the Hotel's room rates per day, multiplied by the total  
21 number of rooms for every day that Defendants continue to use the Best Western Marks  
22 beyond the fifteen-day period.  
23

24 52. Beginning June 17, 2008, Defendants owed \$1,944.00 per day for each  
25 day they were unlawfully using the Best Western Marks. The liquidated damages

1 calculations are based on the Hotel's information provided in the 2008 Best Western  
2 Traveler's Guide and Road Atlas (the "Traveler's Guide"). A copy of the relevant page of the  
3 Traveler's Guide is attached as Exhibit 5.

4  
5 53. Pursuant to ¶ 36 of the Membership Agreement, and A.R.S. § 12-341.01,  
6 Best Western is entitled to recover the attorneys' fees and costs incurred in pursuing this  
7 action.

8 **COUNT IV - FEDERAL TRADEMARK INFRINGEMENT**  
9 **(LANHAM ACT SECTION 32(1), 15 U.S.C. §1114(1))**

10 54. Best Western incorporates by reference the allegations contained in  
11 paragraphs 1 through 53 as though fully set forth herein.

12 55. Despite written demand by Best Western, Defendants refused to cease  
13 and desist from the use of Best Western Marks in connection with the Hotel.

14 56. Defendants continued to hold the Hotel out to the public as a Best  
15 Western member, despite the fact that the affiliation between Defendants and Best Western  
16 ended as of June 17, 2008.

17 57. Defendants' actions complained of have at all times been without Best  
18 Western's consent. Defendants' acts constitute infringement of the Best Western Marks in  
19 violation of Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1), and Section 43(A) of the  
20 Lanham Act, 15 U.S.C. § 1125(a).  
21

22 58. Defendants' acts complained of have damaged Best Western irreparably.  
23 Monetary damages will not afford full and adequate relief for all of Best Western's injuries  
24 resulting from Defendants' conduct. Such injuries include harm to Best Western's goodwill  
25

1 and reputation in the marketplace that money cannot sufficiently compensate. Best Western  
2 is, therefore, requesting and entitled to a preliminary and permanent injunction restraining and  
3 enjoining defendants and their respective officers, members, agents, servants, employees, and  
4 any other persons or entities acting on behalf of or in concert with Defendants, from using the  
5 Best Western Marks or any colorable imitation thereof, in connection with the promotion,  
6 advertisement, and sale of goods and services without Best Western's authorization, pursuant  
7 to 15 U.S.C. § 1116.

9 59. Defendants' infringement was willful. Accordingly, Best Western is  
10 entitled to recover all damages sustained as a result of Defendants' unlawful conduct,  
11 including three times Defendants' profits and Best Western's damages, as well as the costs of  
12 this suit and attorneys' fees, pursuant to 15 U.S.C. § 1116.

14 **COUNT V – FALSE DESIGNATION OF ORIGIN AND UNFAIR COMPETITION**  
15 **(LANHAM ACT SECTION 43(A), U.S.C. § 1125)**

16 60. Best Western incorporates by reference the allegations contained in  
17 paragraphs 1 through 59 above as though fully set forth herein.

18 61. Defendants' unauthorized use of the Best Western Marks likely caused  
19 the public to believe, erroneously, that the Hotel and its services were sponsored by, endorsed  
20 by, or associated with Best Western.

21 62. Defendants' operation and competition with Best Western through  
22 infringement of the Best Western Marks in connection with the Hotel constitutes a false  
23 designation of origin and unfair competition under Section 43(a) of the Lanham Act, 15  
24 U.S.C. § 1125(a).  
25

1           63. Defendants' conduct has caused, and, if Defendants continue to use any  
2 Best Western Marks will cause, Best Western to suffer immediate, irreparable, and  
3 continuous loss, including injury to its goodwill and reputation.

4                   **COUNT VI – FEDERAL TRADEMARK DILUTION (15 U.S.C. § 1125(e))**

5           64. Best Western incorporates by reference the allegations contained in  
6 paragraphs 1 through 63 above as though fully set forth herein.

7           65. Defendants' unauthorized use of the Best Western Marks likely caused  
8 the public to believe, erroneously, that the Hotel and its services were sponsored by, endorsed  
9 by, or associated with Best Western.

10           66. Defendants' continued operation and competition with Best Western  
11 through infringement of the Best Western Marks, in connection with the Hotel, constitutes a  
12 false designation of origin and unfair competition under Section 43(a) of the Lanham Act, 15  
13 U.S.C. § 1125(a).

14           67. Defendants' conduct has caused and, unless enjoined, will cause Best  
15 Western to suffer immediate, irreparable, and continuous loss, including injury to its goodwill  
16 and reputation.

17           68. Upon information and belief, Defendants have undertaken the acts  
18 complained of herein willfully and with the intent to cause confusion, mistake, and deception  
19 on the part of the public.

20           69. If Defendants are using the Best Western Marks unlawfully, unless  
21 restrained by this Court, Defendants will continue to commit the foregoing acts of unfair  
22 competition.

1           70. Monetary damages will not afford full and adequate relief for all of Best  
2 Western's injuries resulting from Defendants' conduct and, therefore, Best Western is entitled  
3 to injunctive relief under 15 U.S.C. §§ 1116, 1118.

4           71. Defendants' acts of unfair competition were willful and entitle Best  
5 Western to recover damages, attorneys' fees, and costs pursuant to 15 U.S.C. § 1117.  
6

7           **COUNT VII – FEDERAL TRADEMARK DILUTION – (15 U.S.C. § 1125(c))**

8           72. Best Western incorporates by reference the allegations contained in  
9 paragraphs 1 through 71 above as though fully set forth herein.

10           73. Best Western has advertised and publicized the Best Western Marks  
11 extensively for decades throughout the United States, including the State of Arizona. As a  
12 result of their inherent distinctiveness and extraordinarily widespread use, the Best Western  
13 Marks have acquired a high degree of recognition and fame for hotel services.  
14

15           74. Defendants began using the Best Western Marks in commerce, pursuant  
16 to the Best Western License, long after Best Western's Marks had already become famous  
17 throughout the United States, including the State of Arizona.

18           75. Defendants' use of the Best Western Marks or variations thereof, in  
19 violation of the Best Western License, caused dilution of the distinctive quality of the Best  
20 Western Marks.  
21

22           76. Upon information and belief, Defendants have committed the acts  
23 complained of herein willfully and with the intent to trade on Best Western's reputation  
24 and/or to cause dilution of Best Western's famous Marks.  
25

1           77. Defendants have damaged Best Western's business, reputation, and  
2 goodwill. Moreover, Defendants' acts have caused and, if Defendants are using the Best  
3 Western Marks unlawfully, will continue to cause, irreparable harm and injury to Best  
4 Western for which it has no adequate remedy at law.

5  
6           **COUNT VIII - UNFAIR COMPETITION - ARIZONA LAW**

7           78. Best Western incorporates by reference the allegations contained in  
8 paragraphs 1 through 77 above as though fully set forth herein.

9           79. Defendants' acts complained of herein constitute unfair competition  
10 under the laws of the State of Arizona.

11           80. Defendants have been unjustly enriched and have damaged Best  
12 Western's business, reputation, and goodwill.

13           81. Upon information and belief, Defendants' acts complained of herein  
14 were intentional, wanton, willful, guided by an evil hand and mind, and committed in bad  
15 faith and with the intent to confuse and deceive the public.

16           82. Defendants' acts complained of herein have caused and, if Defendants  
17 continue to use any Best Western Marks unlawfully, will continue to cause, Best Western  
18 irreparable harm for which there is no adequate remedy at law.

19  
20           **COUNT IX - TRADEMARK DILUTION UNDER ARIZONA LAW -**  
21           **(A.R.S. § 44-1448.01)**

22           83. Best Western incorporates by reference the allegations contained in  
23 paragraphs 1 through 82 above as though fully set forth herein.  
24  
25

1           84. The Best Western Marks are famous within the State of Arizona, and  
2 became famous in Arizona long before Defendants began using the marks.

3           85. Defendants' acts complained of herein constitute commercial use of a  
4 mark or trade name that causes dilution of the distinctive quality of the famous Best Western  
5 Marks.  
6

7           86. Upon information and belief, Defendants have undertaken these acts  
8 willfully and with the intent to trade on Best Western's reputation or to cause dilution of the  
9 Best Western Marks.

10           87. Defendants' acts complained of herein cause dilution to the famous Best  
11 Western Marks in violation of A.R.S. § 44-1448.01.  
12

13           88. Defendants' acts complained of herein have caused and, if Defendants  
14 continue to use any Best Western Marks unlawfully, will continue to cause, irreparable harm  
15 and injury to Best Western's famous Best Western Marks, business reputation, and goodwill  
16 for which there is no adequate remedy at law.

17           **COUNT X – COMMON LAW TRADEMARK INFRINGEMENT**  
18

19           89. Best Western incorporates by reference the allegations contained in  
20 paragraphs 1 through 88 above as though fully set forth herein.

21           90. Best Western has common law rights in the Best Western Marks through  
22 the use of the marks in commerce, such rights existing long before any use of the marks by  
23 Defendants.  
24

25           91. Defendants' acts complained of herein constitute common law  
infringement of the Best Western Marks.

92. Upon information and belief, Defendants have undertaken these acts willfully and with the intent to trade on Best Western's reputation and to cause confusion, mistake, and deception on the public.

93. Defendants' acts complained of herein have caused and, if Defendants continue to use any Best Western Marks unlawfully, will continue to cause, irreparable harm and injury to Best Western's famous Best Western Marks, business reputation, and goodwill for which there is no adequate remedy at law.

## **PRAYER FOR RELIEF**

**WHEREFORE**, Best Western International, Inc., an Arizona corporation prays for judgment against Defendants Niagara River Hotels, Inc., a Canadian corporation and Mangat Verma, an individual, and each of them, jointly and severally, as follows:

A. With respect to Counts I and II:

1. The total of unpaid fees, which as of September 1, 2008 totals unpaid fees of \$25,869.93 including interest at the rate of one and one-half percent (1.5%) per month until paid in full.

B. With respect to Count III:

1. Liquidated damages for breach of the Best Western Agreement in an amount equal to fifteen per cent (15%) of the mean of the Hotel's room rates per day multiplied by the total number of rooms from June 17, 2008 (after the fifteenth day following termination of the membership) until Defendants ceased and desisted from the unlawful and unauthorized use of the Best Western Marks.



1           2.     Beginning July 3, 2008, Defendants owed \$1,944.00 per day for each day  
2 they were unlawfully using the Best Western Marks.

3           C.     With respect to Counts V, VI and VIII:

4                     An order requiring Defendants to make an accounting of the profits derived by  
5 them by reason of their unlawful acts, holding Defendants liable to Best Western for such  
6 profits, and awarding Best Western its actual damages suffered as a result of the trademark  
7 infringement complained of against Defendants, in an amount to be proven at trial.  
8

9           D.     With respect to Counts IV, V, and VI:

10                    An award of treble damages against Defendants pursuant to 15 U.S.C. § 1117(b)  
11 or, alternatively, an award of liquidated damages to Best Western against Defendants  
12 calculated in the manner provided for in ¶ 24 of the Membership Agreement, whichever is  
13 greater.  
14

15           E.     With respect to Counts III-IX:

16                    1.     Preliminary and permanent injunctive relief enjoining Defendants, and  
17 their respective officers, members, agents, servants, and employees, and any other persons or  
18 entities acting on behalf of or in concert with Defendants, from:  
19

20                           (a)     Making any use of the Best Western Marks, any colorable  
21 imitation thereof, or any other confusingly similar marks;

22                           (b)     Displaying, authorizing, licensing, or assisting or facilitating any  
23 other person's or entity's use or display of the Best Western Marks or any colorable imitation  
24 thereof; and  
25

1 (c) Using anything consisting of or incorporating any one or more  
2 words, letters, designs, or devices that contain any component of the Best Western Marks, or  
3 which singly or together are similar in spelling, sound, appearance, or in any other matter to  
4 the Best Western Marks.  
5

6 2. Preliminary and permanent injunctive relief enjoining Defendants and  
7 their respective officers, members, agents, servants, and employees, and any other persons  
8 and entities acting on behalf of or in concert with Defendants, to immediately and  
9 permanently remove all Best Western Marks as used on the premises of, or in reference to,  
10 the Hotel, including (without limitation) any road signs, wall signs, or any other display or  
11 item bearing any of the Best Western Marks.  
12

13 3. Preliminary and permanent injunctive relief ordering Defendants to  
14 permit Best Western to remove any infringing signs, displays, or items from the Hotel, and  
15 awarding Best Western all reasonable and necessary costs of such removal from Defendants  
16 (in addition to whatever penalties the Court may impose upon Defendants for failing to  
17 comply with the Court's order to remove any infringing signs, displays, or items from the  
18 Hotel), if Defendants do not remove such signs, displays, or items from the Hotel within ten  
19 (10) days of the injunction issued pursuant to paragraphs (D)(1) and (2) above.  
20

21 4. Preliminary and permanent injunctive relief enjoining Defendants and  
22 their respective officers, members, agents, servants, and employees, and any other persons  
23 and entities acting on behalf of or in concert with Defendants, from applying for, pursuing, or  
24 owning any applications or registrations, including (without limitation) any domain names,  
25 business names, corporate names, trade names, trademarks, service marks or, d/b/a's that

1 contain any component of the Best Western Marks, any colorable imitation thereof, or any  
2 confusingly similar Marks.

3           5. Preliminary and permanent injunctive relief enjoining Defendants and  
4 their respective officers, members, agents, servants, and employees, and any other persons  
5 and entities acting on behalf of or in concert with Defendants, to immediately assign the  
6 ownership of any application or registration that contains any component of the Best Western  
7 marks, any colorable imitation thereof, or any other confusingly similar Marks to Best  
8 Western or, alternatively, to file all documents necessary to effectuate Defendants'  
9 abandonment of such applications or registrations.  
10

11           6. Preliminary and permanent injunctive relief enjoining Defendants and  
12 their respective officers, members, agents, servants, and employees, and any other persons  
13 and entities acting on behalf of or in concert with Defendants, to immediately notify all  
14 advertisers, search engines, and providers of related services that Defendants are no longer  
15 affiliated with Best Western and are required to cause the cessation of all advertising and  
16 distribution of promotional material containing any of the Best Western Marks, any colorable  
17 imitation thereof, or any other confusingly similar marks, and enjoining Defendants from  
18 using any such marks (or any imitations or marks confusingly similar thereto) anywhere on  
19 the Internet or elsewhere, including (without limitation) any use on or with any websites,  
20 domain names, metatags, key words, banner ads, or search engines.  
21

22           7. An Order directing Defendants to file with this Court and serve on Best  
23 Western within ten (10) days after service of an injunction, a report in writing under oath  
24  
25

1 setting forth in detail the manner and form in which Defendants have complied with such  
2 injunction.

3 8. An award to Best Western of its damages in an amount to be proven at  
4 trial.

5  
6 F. With respect to such counts, as allowed by law, an award of special exemplary  
7 and/or punitive damages in an amount to be determined at trial.

8 G. With respect to all Counts:

9 1. Attorneys' fees and costs incurred herein against Defendants pursuant to  
10 the Membership Agreement, A.R.S. § 12-341.01, and/or 15 U.S.C. § 1117(a), (or any other  
11 applicable law).

12 2. For such other and further relief as the Court deems just and proper in the  
13 circumstances.

14  
15 DATED this 24<sup>th</sup> day of September, 2008.

16 CURTIS, GOODWIN, SULLIVAN,  
17 UDALL & SCHWAB, P.L.C.

18  
19 By: /s/ Michelle Swann  
20 Kelly Y. Schwab  
21 Michelle Swann  
22 501 East Thomas Road  
23 Phoenix, Arizona 85012-3205  
24 Attorneys for Plaintiff